

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, ) 8:08CV344  
) Omaha, Nebraska  
vs. ) July 31, 2009  
)  
\$35,000.00 IN UNITED STATES )  
CURRENCY, )  
)  
Defendant, )  
)  
DANIEL K. HITCHCOCK, )  
)  
Claimant. )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE F. A. GOSSETT  
UNITED STATES MAGISTRATE JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFF: Ms. Nancy A. Svoboda  
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Proceedings recorded by electronic sound recording, transcript  
produced with computer.

1 (At 9:38 a.m. on July 31, 2009, the following  
2 proceedings were had:)

3 COURTROOM DEPUTY: All please rise. This court is  
4 now in session.

5 THE COURT: Please be seated. Good morning.

6 MS. SVOBODA: Good morning, Judge.

7 THE COURT: Case No. 8:08344, United States of  
8 America vs. \$35,000 in United States Currency.

9 Counsel for the government, please identify.

10 MS. SVOBODA: Morning, Your Honor. Nancy Svoboda on  
11 behalf of the United States.

12 THE COURT: For the defendant who's present.

13 MR. COOK: Good morning --

14 THE COURT: Excuse me, for the claimant who's  
15 present.

16 MR. COOK: Good morning, Your Honor. Justin Cook on  
17 behalf of the complainant -- claimant Daniel Hitchcock.

18 THE COURT: Miss Svoboda.

19 MS. SVOBODA: Judge, no opening statements or  
20 anything, Your Honor, but I would like to at this time for  
21 purposes of this hearing offer into evidence -- Judge, it was  
22 previously marked for trial as Exhibit No. 4, and, quite  
23 frankly, that's how all my numbers are -- everything's already  
24 on it --

25 THE COURT: That's fine.

1 MS. SVOBODA: -- so if I may offer as Exhibit No. 4,  
2 it is a copy of the video -- in-car camera of the traffic stop  
3 at issue in this case previously delivered to the Court and,  
4 of course, provided to Mr. Cook. I'd offer Exhibit No. 4.

5 THE COURT: Mr. Cook.

6 MR. COOK: No objection, Your Honor.

7 THE COURT: Exhibit 4 will be received.

8 MS. SVOBODA: Thank you.

9 Your Honor, I'd call Kaleb Bruggeman to the stand.

10 THE COURT: Mr. Cook, do you have any opening motions  
11 or statements?

12 MS. SVOBODA: Oh, I -- I apologize.

13 THE COURT: That's okay.

14 MR. COOK: I would just ask that the witnesses be  
15 sequestered. Other than that, Your Honor, I do not have any  
16 opening statements.

17 THE COURT: Motion to sequester's granted.

18 MS. SVOBODA: Overstepped me on that, Mr. Cook -- I  
19 overstepped my bounds there. I apologize.

20 COURTROOM DEPUTY: State your full name for the  
21 record, please, and spell your last name.

22 THE WITNESS: Kaleb Bruggeman, B-r-u-g-g-e-m-a-n.

23 COURTROOM DEPUTY: (Inaudible.)

24 THE WITNESS: K-a-l-e-b.

25 KALEB BRUGGEMAN, PLAINTIFF'S WITNESS, SWORN

1 THE COURT: The government's witness.

2 MS. SVOBODA: Thank you.

3 DIRECT EXAMINATION

4 BY MS. SVOBODA:

5 Q. Sir, would you mind stating your name for the record.

6 A. Kaleb Bruggeman.

7 Q. You're wearing a pretty distinctive uniform, sir. Are  
8 you employed by the Nebraska State Patrol?

9 A. Yes, I am.

10 Q. In what capacity?

11 A. I am a trooper with the Nebraska State Patrol.

12 Q. How long have you been a trooper?

13 A. Approximately seven years.

14 Q. What is -- what are your duties and responsibilities as a  
15 trooper?

16 A. I am currently assigned to the traffic services division  
17 which we enforce all traffic laws. Our emphasis is on traffic  
18 enforcement. All criminal laws for the State of Nebraska and  
19 all federal laws.

20 Q. Okay. Do you work in a certain area of the state?

21 A. I am currently assigned to the Lincoln duty station,  
22 Lincoln, Nebraska, and the surrounding area.

23 Q. Do you conduct your duties in the uniform that you're  
24 wearing and in a marked cruiser?

25 A. Yes, I do.

1 Q. Okay. I'd like to direct your attention to January 3,  
2 2008. Were you working for the Patrol on that day or evening  
3 in the capacity you've just described?

4 A. Yes.

5 Q. And on that day -- What was your shift of employment  
6 that day?

7 A. That day I was actually working a day shift, and I went  
8 to work at 8 a.m., and I would have been off at 6 p.m. that  
9 night normally.

10 Q. Okay. On that day did you come in contact ultimately  
11 with a man named Daniel Hitchcock?

12 A. Yes, I did.

13 Q. He was driving a Cadillac, correct?

14 A. Correct.

15 Q. Trooper, did you stop Mr. Hitchcock for speeding in Otoe  
16 County, Nebraska?

17 A. Yes, I did.

18 Q. Okay. About what time did that stop occur?

19 A. I believe it was around 1:52 p.m.

20 Q. Where were you when you saw Mr. Hitchcock's Cadillac?

21 A. When I first observed the vehicle, I was approximately  
22 one mile east of Syracuse on Highway -- State Highway 2 which  
23 is mile marker 488.

24 Q. Four eight eight on the highway?

25 A. Correct.

1 Q. Okay.

2 A. On Highway 2.

3 Q. All right. Which direction was it traveling?

4 A. The vehicle -- I was eastbound. The -- his vehicle was  
5 westbound.

6 Q. All right. So you're coming toward each other, passing  
7 each other that way?

8 A. Correct.

9 Q. Where did you stop Mr. Hitchcock's vehicle in order to  
10 conduct the speeding violation?

11 A. It was approximately one mile west of Unadilla on Highway  
12 2 which is approximately five miles from where I first  
13 observed the vehicle.

14 Q. Okay. And if I asked you this, I apologize. About what  
15 time of day did the traffic stop happen?

16 A. Approximately 1:52 p.m.

17 Q. Okay. What's the weather like this day?

18 A. It was clear and brisk, cold, approximately 20 degrees  
19 area. There was snow on the ground.

20 Q. Okay. Anybody else in the vehicle besides Mr. Hitchcock?

21 A. Yes.

22 Q. Who was that?

23 A. Henry Tandler I believe was the last name.

24 Q. All right. But Mr. Hitchcock's driving, right?

25 A. Correct.

1 Q. Okay. So you conduct the traffic stop by how?

2 A. Just activating my emergency lights and stopping the  
3 vehicle.

4 Q. Okay. And Mr. Hitchcock stopped pretty much right away,  
5 no issue with that, right?

6 A. Correct.

7 Q. Okay.

8 THE COURT: Miss Svoboda, if I might interrupt you  
9 just for a moment. I want to make sure we have on the  
10 record -- we talked about it in a pretrial conference but not  
11 on the record.

12 Mr. Cook, regarding the motion that was filed in this  
13 matter, which is number 28, that motion talks about also  
14 objecting to the stop based upon the government's allegation  
15 of speeding, and my understanding is you want to withdraw that  
16 portion of the motion.

17 MR. COOK: That's correct, Your Honor, on the issue  
18 of speeding.

19 THE COURT: Very good. As the reason for the stop?

20 MR. COOK: Correct.

21 THE COURT: I'll accept that.

22 I just wanted to make a record of that, Miss Svoboda, so  
23 the record's clear.

24 MS. SVOBODA: Thank you.

25 BY MS. SVOBODA:

1 Q. Trooper, tell me how you approached the vehicle.

2 A. I approached the vehicle on the driver's side making  
3 contact at the driver's side window.

4 Q. What, if anything, about the vehicle -- interior of the  
5 vehicle do you observe as you make your contact?

6 A. As I'm approaching the vehicle, I observed a subject  
7 laying down in the back seat. I observed it -- what it  
8 appeared to me was he was pretending to be asleep.

9 Q. Now, this person lying down was ultimately identified as  
10 Mr. Tendler, correct?

11 A. Correct.

12 Q. When you say "pretending to be asleep," what did you see?

13 A. He was slightly opening his eyes, and when I looked in  
14 his direction, he quickly would close them. He did that more  
15 than once while --

16 Q. Okay.

17 A. -- while I was up at the vehicle.

18 Q. What, if anything, did you say upon your approach to the  
19 vehicle?

20 A. I advised the driver of the reason for stop right away  
21 and asked him to produce his information, driver's license,  
22 registration, insurance, that information.

23 Q. Did he provide those things to you, Trooper?

24 A. He provided me with his driver's license and a rental  
25 agreement.



1 Q. Okay. What happened next?

2 A. I had a short conversation about the reason for the stop.

3 Q. What'd you say in that regard?

4 A. I just advised him that the reason I'm stopping him was I  
5 had him speeding and I advised him how fast I had him going.

6 Q. Okay. What happened next?

7 A. At that point I asked for his passenger's identification  
8 and he produced a Georgia driver's license.

9 Q. Mr. Tandler did?

10 A. Yes.

11 Q. All right. What happened next?

12 A. I asked -- I also observed some other paperwork setting  
13 on the front seat of the vehicle.

14 Q. What was that?

15 A. There was a MapQuest actual map setting on the  
16 passenger's seat and I could see the balloon or blip on it  
17 where it said end which was in northern California.

18 Q. Was that significant to you?

19 A. Not at the time it was not.

20 Q. Okay. Any other observations did you -- did you make any  
21 other observations about the car while you're up there at this  
22 initial contact?

23 A. I did -- did detect an odor coming from the vehicle.

24 Q. What was that?

25 A. I detected the strong odor of raw marijuana coming from

1 the vehicle.

2 Q. Trooper, how is it that you're familiar with the odor  
3 of -- with the smell of raw marijuana?

4 A. Through training and through my job every day making  
5 traffic stops and dealing with subjects that had -- in  
6 possession of marijuana.

7 Q. Can you estimate for me on a monthly or a weekly basis  
8 how often you come in contact with what you believe to be the  
9 odor of raw marijuana?

10 A. Probably a safe estimate would be a couple times -- two  
11 to three times a week.

12 Q. Okay. What happened next?

13 A. At that point I asked Mr. Hitchcock to step back to my  
14 patrol unit.

15 Q. And did he do so?

16 A. Yes, he did.

17 Q. And, again, just so -- just so we're clear on this, no  
18 incident with that? He didn't try to not come back to your  
19 car or anything like that?

20 A. Correct. He cooperated and came back to my patrol unit.

21 Q. All right, great. What happened next?

22 A. I had him take a seat in my patrol unit and, again, at  
23 that point I could detect the odor of raw marijuana coming  
24 from his person.

25 Q. Okay. Did you ask him about that?

1 A. Not yet. Not at that point I did not.

2 Q. All right. So what -- what happens when the two of you  
3 are in your cruiser?

4 A. I contact my dispatch in Lincoln. I first tried on my  
5 radio but was unsuccessful, so I called them on my cell phone.

6 Q. What's the purpose of contacting dispatch?

7 A. I was contacting dispatch first to advise them that I was  
8 on a traffic stop --

9 Q. Okay.

10 A. -- and also I advised them -- I used ten-codes is what  
11 we use. I advised them that I needed 10-89 which is a  
12 ten-code for I need assistance and that I believed that I had  
13 10-40 which is a drug violation.

14 Q. All right. What happened next?

15 A. I then asked my dispatch to run the subjects to check if  
16 they had valid licenses, any wants, warrants out on their  
17 person, and I also asked them to run criminal histories on  
18 them.

19 Q. What happened next?

20 A. I -- My dispatch advised -- came back and advised me  
21 that they had valid licenses, no warrants, but both subjects  
22 did have lengthy criminal histories.

23 Q. All right. Now, in the time you call the dispatch and  
24 you receive that response -- I should have said it this way:  
25 Did you get that response from your dispatch immediately or

1 did it take a little time?

2 A. A little time, but probably less than five minutes.

3 Q. Okay. So what'd you do in those five minutes?

4 A. I spoke with Mr. Hitchcock.

5 Q. What'd you talk about?

6 A. I just -- General questions about his trip, where he was  
7 coming from, where he was going to. I believe I asked him  
8 what he did for a living. I also asked him about any criminal  
9 history he may have as far as if he'd ever been arrested for  
10 anything.

11 Q. What'd he say in that regard?

12 A. He denied ever being arrested. I believe he admitted to  
13 traffic violations.

14 Q. Okay. Anything about his travel itinerary cause you any  
15 concern?

16 A. Yes.

17 Q. What?

18 A. When I asked him where he was going to, he started to say  
19 St. Louis but then quickly changed his response to Salt Lake  
20 City, Utah.

21 Q. Why was that significant to you?

22 A. I had noticed in the front seat that he had a MapQuest  
23 map showing he was going to northern California, so I found  
24 that odd.

25 Q. Anything else, sir?

1 A. During my conversation with him, he appeared very  
2 nervous. When I say nervous, his legs were noticeably shaking  
3 and he was noticeably sweating, and I should note that he was  
4 wearing shorts and a T-shirt --

5 Q. Okay.

6 A. -- and it was a cold winter day.

7 Q. Sir, you obviously -- as you said you were in uniform on  
8 this day and you're -- and Mr. Hitchcock is sitting right next  
9 to you in a cruiser. I assume you have a gun on your hip.

10 A. Correct.

11 Q. You come into situations like that often. You have  
12 people in your car when you effectuate a traffic stop, right?

13 A. Yes.

14 Q. Trooper, isn't everybody nervous when they're sitting in  
15 your cruiser?

16 A. Yes. That'd be a fair statement that most people are  
17 nervous.

18 Q. Is -- On this day is Mr. Hitchcock more nervous than you  
19 normally encounter?

20 A. Yes.

21 Q. Okay. Any other observations during this five minutes  
22 approximately while you're waiting for dispatch that your  
23 conversation with Mr. Hitchcock caused you some concern?

24 A. He was -- I -- I guess when I asked him about his trip  
25 and he was able to provide a name of the friend he was going

1 to see. He was very vague at first that -- just a first name.  
2 He was able to produce a last name after being asked, and at  
3 the time he told me about his work situation which raised my  
4 interest too as far as being able to afford to drive across  
5 country the way he was, renting a vehicle.

6 Q. What'd you mean by that?

7 A. Well, it's not cheap to rent a vehicle, and he said he  
8 was -- his -- as far as his -- as I recall, his job was he was  
9 a door-to-door jewelry salesman --

10 Q. Uh-huh.

11 A. -- and his response as far as how much money he was  
12 making, it was less than I believe \$5,000 in the last year.

13 Q. Okay. Was the Cadillac a rented vehicle?

14 A. Yes, it was.

15 Q. After you received the information that you testified  
16 about from your dispatch, what happened next?

17 A. At that point, I -- I waited -- well, during that  
18 situation -- as I was waiting, a Otoe County Deputy Sheriff  
19 showed up at the scene and I did contact him and tell him what  
20 was going on with the stop.

21 Q. Okay. What happened next?

22 A. I then issued Mr. Hitchcock his citation for speeding.

23 Q. All right. Is a citation a ticket?

24 A. Yes, it is.

25 Q. Okay. Did -- What did he say upon receiving the

1 citation, if anything?

2 A. When I told him -- you know, I believe my words were  
3 something to the effect that he was going way too fast --

4 Q. Okay.

5 A. -- and he said -- his exact words were I know.

6 Q. All right. So you gave him the ticket. Did you return  
7 the paperwork to him?

8 A. Yes, I did.

9 Q. Oh, one thing. Prior to doing that, issuing the ticket,  
10 did you ever go up and talk to Mr. Tendler at the vehicle?

11 A. Yes, I did.

12 Q. When did you do that?

13 A. It was before issuing the citation I went and made  
14 contact with him. It was after finding out from my dispatch  
15 that there was no wants, warrants, suspended licenses on the  
16 subjects.

17 Q. All right. Tell me about your conversation with  
18 Mr. Tendler.

19 A. It was just a brief conversation. I asked where they  
20 were headed to, what they were going for, and I asked him if  
21 he'd ever been arrested for anything as I recall.

22 Q. What did he say about him being arrested?

23 A. I believe he denied it also that he had any criminal  
24 history -- or significant criminal history.

25 Q. Did his travel itinerary story differ from

1 Mr. Hitchcock's?

2 A. No. They were pretty much the same.

3 Q. Okay. Now I'm back to the point where you issue the  
4 citation or give the ticket to Mr. Hitchcock. Did you return  
5 your -- all of his paperwork back to him also?

6 A. Yes, I did.

7 Q. How did you end the traffic stop?

8 A. I handed him all of his paperwork back and I believe I  
9 actually advised him that he was -- he was free to go.

10 Q. What happened next?

11 A. As he opened his door, I asked him if I could ask him a  
12 few more questions.

13 Q. What was his reply?

14 A. He advised in the affirmative yes, I believe, or  
15 something to that effect.

16 Q. What happened next?

17 A. I then confronted him about the odor of marijuana coming  
18 from his vehicle and person.

19 Q. How'd you do that?

20 A. I just -- I believe I told him something to the effect  
21 that I was going to be straightforward with him --

22 Q. Okay.

23 A. -- and I asked him about marijuana coming from the  
24 vehicle and his person, and I asked him if I could search his  
25 vehicle.



1 Q. When you say that you -- Well, strike that. What, if  
2 anything, did he say in response to your request?

3 A. He denied any knowledge of any odor of marijuana coming  
4 from him or his vehicle and he advised that he did not want me  
5 to search his vehicle 'cause he was in a hurry.

6 Q. Okay. What happened next?

7 A. At that point, I advised him that the fact that I was  
8 smelling the odor of marijuana coming from his vehicle gave me  
9 a probable cause to search his vehicle.

10 Q. Did he say anything in response to that?

11 A. I don't believe he had any response. He may have said he  
12 was in a hurry, something to that effect, but no -- he didn't  
13 challenge me on it.

14 Q. Okay. Good way to say it. So then what happened?

15 A. I asked Mr. Tendler to step back to -- had him take a  
16 seat in the back seat of my patrol unit.

17 Q. And did he do that?

18 A. Yes, he did.

19 Q. And, again, that happened without any kind of incident,  
20 correct?

21 A. Correct.

22 Q. What'd you do next?

23 A. I then began a search of the vehicle.

24 Q. Now, where's the Otoe County Sheriff's Deputy -- his name  
25 was Mike Holland, correct?

1 A. Correct.

2 Q. Where's Deputy Holland as you begin the search for {sic}  
3 your {sic} vehicle?

4 A. He was standing between my vehicle and the Cadillac.

5 Q. Okay. He's more of a security position, correct?

6 A. Correct.

7 Q. Now, are -- is Mr. -- so Mr. Hitchcock is in the front  
8 seat of your vehicle and Mr. Tendler's in the back seat,  
9 correct?

10 A. Correct.

11 Q. Are either of them restrained?

12 A. No. Well, Mr. Tendler was in a cage, so he could not get  
13 out by himself, but he -- nobody was in handcuffs.

14 Q. Okay. Where do you start the search of the vehicle?

15 A. I believe I started at the front of the vehicle, driver's  
16 and passenger's side.

17 Q. Did you find anything of significance to you there?

18 A. Some paperwork that was -- the rest of that MapQuest  
19 report showing that they were going to a place in northern  
20 California. There was actual directions, text directions, on  
21 how to get there, and --

22 Q. Text?

23 A. In text I guess I should say.

24 Q. Okay.

25 A. Writing.

1 Q. Okay.

2 A. And then there was numerous paperwork scattered  
3 throughout the vehicle. I did recover a citation that they'd  
4 been issued earlier that morning in Kentucky, and as I recall,  
5 there was a air freshener spray bottle in the back seat of the  
6 vehicle.

7 Q. Did you smell any of the air -- anything like air  
8 freshener when you're conducting your search of the inside of  
9 the vehicle?

10 A. Inside the vehicle I don't recall smelling air freshener,  
11 no.

12 Q. When you're inside the vehicle doing the search, do you  
13 still smell the odor of raw marijuana?

14 A. Yes.

15 Q. What happens next?

16 A. I -- After searching the interior of the vehicle, I  
17 proceed to the trunk of the vehicle.

18 Q. Okay. You open the trunk. What'd you see?

19 A. A couple suitcase -- there were, I believe, two or three  
20 suitcases in the trunk of the vehicle.

21 Q. What happened next?

22 A. I opened one of the suitcases and immediately observed a  
23 Glock 23 handgun.

24 Q. Which -- which suitcase was this in?

25 A. It was a black suitcase. I later was able to identify

1 the owner of the suitcase.

2 Q. The -- There was a black suitcase in the trunk and the  
3 other suitcase was red, correct?

4 A. Correct.

5 Q. After you found the gun, what'd you do?

6 A. At that time -- I had already been advised by my  
7 dispatch -- my dispatch advised me that both subjects were  
8 convicted felons --

9 Q. Okay.

10 A. -- so they were both placed in handcuffs at that point.

11 Q. What happened next?

12 A. I then continued to search the vehicle. Inside that same  
13 suitcase I located a Food Saver I believe was the brand name.  
14 What I would call a shrink-wrap machine or food -- food  
15 processor machine.

16 Q. Okay. That's in the -- that's in the same suitcase with  
17 the gun?

18 A. Yes.

19 Q. Okay. What happens next?

20 A. I continue my search and inside the driver's side trunk  
21 wall I pulled the carpet back and located a shrink-wrapped  
22 bundle of U.S. currency.

23 Q. Ultimately, sir, that is the currency at issue in this  
24 case, correct?

25 A. Correct.

1 Q. Thirty-five thousand dollars?

2 A. Correct.

3 Q. Okay. Upon finding that, what'd you do?

4 A. At that time I pretty much -- once I located that  
5 currency, I stepped back from the search and contacted a  
6 supervisor with the Nebraska State Patrol and I also contacted  
7 another officer with the Nebraska State Patrol.

8 Q. Okay. Just to let them know of what you found and that  
9 kind of thing?

10 A. Correct.

11 Q. Did you continue to search the car there at that point?

12 A. No. Well, there was a little bit more search done, but  
13 the remainder of it was done after the vehicle was moved to  
14 the Otoe County Sheriff's Office.

15 Q. Okay. And at the Otoe County Sheriff's Office, was  
16 anything else found in the vehicle that was significant to you  
17 or other law enforcement officers?

18 A. Other than just more paperwork that we were able to go  
19 through. There was no other significant things that I recall.

20 Q. But was the paperwork that was found significant to you?

21 A. Yes.

22 Q. In what way?

23 A. It just -- The paperwork -- a lot -- it showed the  
24 pattern of their -- where they'd been, where they were coming  
25 from and their trip.

1 Q. Where had they been?

2 A. Well, the -- they were coming from Atlanta, Georgia, and  
3 I -- one significant thing I did notice with the paperwork was  
4 Mr. Tendler's driver's license.

5 Q. Why was that significant to you?

6 A. It had been issued the day before in Atlanta, Georgia,  
7 and he was actually wearing the same clothing in the picture  
8 that he was wearing when I stopped him.

9 Q. Why was that significant to you?

10 A. Just -- It -- it also showed that they'd been driving  
11 pretty much nonstop from when they left Atlanta, Georgia.

12 Q. Okay. Why was that significant to you?

13 A. Normal -- normally, people don't drive, you know, 24  
14 hours --

15 MR. COOK: I'm going to --

16 A. -- straight.

17 MR. COOK: -- I'm going to object now as to lack of  
18 foundation. I'm going to also object as to relevance and --  
19 and how does the officer know what's normal, I guess, and the  
20 significance, Your Honor.

21 THE COURT: I'll sustain it on foundation.

22 BY MS. SVOBODA:

23 Q. Generally, after you -- you've testified that after you  
24 find the money, your dealings with Mr. Hitchcock kind of takes  
25 a -- kind of take a different turn at that point, correct?

1 A. Correct.

2 Q. Okay. So, ultimately, Mr. Hitchcock and Mr. Tandler  
3 would have been taken to some State Patrol office or  
4 something?

5 A. They were actually transported to the Otoe County  
6 Sheriff's Office in this case.

7 Q. Okay. Who transported them, do you know?

8 A. One of the subjects was transported by Deputy Holland.  
9 Mr. Tandler was transported by Mr. -- Deputy Holland --

10 Q. Okay.

11 A. -- and I transported Mr. Hitchcock.

12 Q. During the transport you driving Mr. Hitchcock, did you  
13 say anything to him?

14 A. No. No. There was no conversation at all.

15 Q. Okay. At -- Once you get -- once you get to the Otoe  
16 County Sheriff's Office, what, if anything, did you do with  
17 Mr. Hitchcock?

18 A. At that point, they were taken into the Otoe County  
19 Sheriff's Office -- actually, the Otoe County jail, and at  
20 which time I actually got a copy of their criminal history --

21 Q. Okay.

22 A. -- and after looking at their criminal history, I  
23 verified that actually they were not convicted felons, neither  
24 one of them had actually been convicted of a felony.

25 Q. All right.

1 A. At that point, they were just placed in holding until  
2 Sergeant Kallhoff with the Nebraska State Patrol could speak  
3 with them.

4 Q. Okay. And, ultimately, that did happen too, correct?

5 A. Correct.

6 Q. Okay. So -- But any of the other time -- any of the  
7 time that Mr. Holland -- I'm sorry, Mr. Hitchcock was at the  
8 Otoe County Sheriff's Office did you speak to him directly?

9 A. Not other than him -- maybe just general -- I may have  
10 had a short conversation, but it would have just been general  
11 talking. It was no questioning.

12 Q. Well, then what kind of conversation did you have with  
13 him?

14 A. Just about what was going on. We never -- I never  
15 discussed with him what I found in the vehicle, though, but  
16 he -- I do know he made conversation wanting to know what was  
17 going on, and I advised him, I believe, that there would be an  
18 officer that would speak with him.

19 Q. Okay. Okay.

20 MS. SVOBODA: May I have just a second, please,  
21 Judge?

22 THE COURT: You may.

23 MS. SVOBODA: Thank you. Thank you, Judge. Judge, I  
24 have no other questions for the trooper, but having said that,  
25 if I may just ask the Court one question. Judge, may I take



1 one minute to call the next witness that I would intend to  
2 call 'cause they're about 15 minutes away, Judge, which would  
3 just make sure that he's here right when --

4 THE COURT: Sure.

5 MS. SVOBODA: Okay. Thank you. Judge, thank you for  
6 the time.

7 THE COURT: Uh-huh. Mr. Cook.

8 MR. COOK: Sure, Your Honor. Judge, we may want to  
9 approach to discuss something with you.

10 THE COURT: Sure.

11 MR. COOK: And I apologize for not standing. I don't  
12 know what I'm thinking. It ties in with what we discussed  
13 earlier, Judge.

14 (Bench discussion had off the record.)

15 MR. COOK: Would you like me to have this marked  
16 then, Your Honor?

17 COURTROOM DEPUTY: (Inaudible.)

18 THE COURT: Yes, you may.

19 MR. COOK: I apologize.

20 I would like to have that marked as Exhibit 109. And I  
21 would like to have that marked as Exhibits {sic} 110.

22 Thank you, Your Honor. May I approach the witness, Your  
23 Honor?

24 THE COURT: You may.

25

CROSS-EXAMINATION

BY MR. COOK:

Q. Trooper Bruggeman, I've just handed you what's marked as Defendant's Exhibit 109; is that correct?

A. Yes.

Q. Do you recognize that particular document?

A. Yes.

Q. What is it?

A. It appears to be a photocopy of the citation I spoke of that was located in the vehicle that was issued by another agency. I believe it was in Kentucky.

Q. Okay. It was in Christian County, Kentucky, correct?

A. Correct.

Q. Does that appear to be a true and correct copy of the actual document that you did discover in the vehicle driven by Mr. Hitchcock on June 3rd -- or on January 3rd, 2008?

A. Yes.

MR. COOK: I would offer what's marked as Exhibit 109 of the defendant.

THE COURT: 109. Miss Svoboda?

MS. SVOBODA: Relevance -- objection on relevance, Judge.

THE COURT: Overruled. 109 will be received.

MS. SVOBODA: Okay.

BY MR. COOK:

1 Q. Does it indicate what time of day, Officer Bruggeman,  
2 that this vehicle -- well, rather -- strike that. Does it  
3 indicate what type of vehicle was stopped on that citation?

4 A. Yes, it does.

5 Q. And is that the same vehicle that you stopped with  
6 Mr. Hitchcock in it on January 3rd, 2008, in Otoe County,  
7 Nebraska?

8 A. Yes.

9 Q. Okay. And what time of the day -- what date and time  
10 does that citation indicate this vehicle was stopped  
11 previously?

12 A. January -- January 3rd, 2008, at 4:32 a.m.

13 Q. Okay. Does it indicate who was driving the vehicle?

14 A. It has the defendant which I would assume was driving the  
15 vehicle -- or -- not this defendant. It has the person who  
16 was cited who I assume was driving the vehicle.

17 Q. Okay. And who was that?

18 A. Henry Tandler.

19 Q. Okay. And you indicated on prior testimony that  
20 Mr. Tandler was found in the car at the time of the stop as  
21 well, correct?

22 A. Correct.

23 Q. And through conversations it was also indicated to you  
24 that they were traveling together, correct?

25 A. Correct.

1 Q. Okay. Now I'm going to fast-forward, Trooper, to the  
2 actual stop itself of Mr. Hitchcock. At the time of the stop,  
3 did he have any issues with finding his driver's license or  
4 any of the information regarding the vehicle?

5 A. He was able to produce everything adequately.

6 Q. Okay. And he had validly rented this vehicle, correct?

7 A. Correct.

8 Q. And there weren't any issues with his driver's license,  
9 correct?

10 A. Correct.

11 Q. At the -- You'd indicated you initially smelled raw  
12 marijuana upon the stop, correct?

13 A. Correct.

14 Q. Now, was this as soon as he rolled down the window or --  
15 Describe to me the first point at which you smelled raw  
16 marijuana.

17 A. Right when I got -- right when I got up to that vehicle  
18 to that driver's door and the window was down, I detected the  
19 odor of raw marijuana.

20 Q. Okay. I don't know if there's a raw marijuana scale for  
21 smell, but how strong in your opinion was the smell?

22 A. I believe I noted it as strong. I usually when -- My  
23 only scale I can do is when I'm arresting a driving under the  
24 influence person, I use a scale of how strong the odor of  
25 alcohol is, and I usually go slight, moderate to strong.

1 Q. Okay. And in your opinion, there was a strong odor of  
2 raw marijuana then, correct?

3 A. Correct.

4 Q. And you noticed this as soon as the window was rolled  
5 down when you walked up to the passenger side; is that  
6 correct?

7 A. Correct.

8 Q. Or, rather, the driver's side?

9 A. Correct.

10 Q. Did you indicate at any point in time to Mr. Hitchcock  
11 the amount of marijuana that you estimated to be in the car?

12 A. I don't believe so, no.

13 Q. Did you make mention of the smell of marijuana thinking  
14 back -- looking back on this when you initially walked up to  
15 the driver's side?

16 A. No, I don't believe so. I -- When I was up at the  
17 vehicle, I did not mention it to Mr. Hitchcock.

18 Q. Okay. Is there any reason as to why you didn't mention  
19 the smell of raw marijuana immediately?

20 A. My -- Normally, when I -- when I smell marijuana coming  
21 from a vehicle and there's more than one person in that  
22 vehicle, I normally don't mention it to them when I'm up  
23 there. I usually bring the person back and talk to them. I  
24 can explain further if you'd like.

25 Q. Okay. Did you find any raw marijuana in that vehicle?

1 A. No, I did not.

2 Q. Did you find any burnt marijuana in that vehicle?

3 A. No, I did not.

4 Q. Did you find any paraphernalia in that vehicle?

5 A. No, I did not.

6 Q. Have you ever had occasion in the past to smell raw  
7 marijuana but not find anything in the vehicle?

8 A. Yes.

9 Q. Once you smelled that smell of raw marijuana, did you  
10 make up your mind at that point in time that you were going to  
11 search the vehicle?

12 A. Yes.

13 Q. So at that point in time, Mr. Hitchcock would not have  
14 been free to leave, correct?

15 A. Correct.

16 Q. You had also indicated on direct that you noticed a  
17 MapQuest map or a couple MapQuest maps in the car; is that  
18 correct?

19 A. Correct.

20 Q. Was there more than this one MapQuest map that had a  
21 destination of northern California?

22 A. I believe that there was two actual printout maps, one  
23 was bigger than the other, that I located during the search,  
24 but I believe that it was the same location in northern  
25 California, but I don't recall if it was the exact same but

1 same area.

2 Q. Did one of those maps happen to have a beginning location  
3 of Reno, Nevada?

4 A. They may have. I don't recall, but they may have.

5 Q. Okay. You'd also testified that the two individuals',  
6 Mr. Tendler and Mr. Hitchcock's, stories all in all matched up  
7 fairly well, correct?

8 A. Correct.

9 Q. Is it also possible -- Well, strike that. You'd also  
10 testified on direct that Mr. Hitchcock informed you he was  
11 headed to Salt Lake City, Utah; is that correct?

12 A. Correct.

13 Q. Is it possible that he told you he was headed to Lake  
14 Tahoe?

15 A. No. He advised Salt Lake City, Utah.

16 Q. Did you notice any other maps or atlases in the car other  
17 than those printouts?

18 A. There may have been another -- I don't -- I didn't  
19 notice one, no.

20 Q. Okay. During your communications with Mr. Hitchcock, was  
21 he forthcoming with information on the trip, what their plans  
22 were, et cetera?

23 A. Yes. He answered all my questions.

24 Q. You'd also testified that he indicated he was traveling  
25 to St. Louis initially when you asked him where he was going

1 and then changed it to Salt Lake; is that correct?

2 A. Correct.

3 Q. And, additionally, you indicated he was coming from  
4 Atlanta; is that correct?

5 A. Correct.

6 Q. Is it possible that he confused that he had went through  
7 St. Louis on his way to where he was currently?

8 A. Yeah, that's possible.

9 Q. Do you ever find that when people are nervous and you're  
10 asking them questions, sometimes they may mix up their answers  
11 when they're providing them to you?

12 A. Correct.

13 Q. Is it also possible that he may have had multiple  
14 destinations that he was going to?

15 A. It's possible, yes.

16 Q. You'd indicated that he testified to you that he did some  
17 selling of jewelry; is that correct?

18 A. I -- yes.

19 Q. Did he specify? Did he say watches? Did he tell you  
20 anything in particular?

21 A. I don't -- I -- He may have said watches now that you  
22 say that, but I don't recall him being very specific on it.

23 Q. Did he tell you that that was his sole and only means of  
24 income?

25 A. No.



1 Q. You also indicated that when you addressed the issue of  
2 speeding that he advised you that he knew he was speeding; is  
3 that correct?

4 A. Yes.

5 Q. And from the citation we know -- from the prior citation  
6 in Kentucky, one would assume that he at least knew he was  
7 speeding on two other occasions as well, correct?

8 A. Well, he wasn't driving during that other citation, so I  
9 can't speak to what he did or did not know.

10 Q. Fair enough. But you can tell from that that they had  
11 sped at least more than one time during this trip, correct?

12 A. It appears so, yes.

13 Q. On your testimony, you indicated that Mr. Hitchcock and  
14 Mr. Tender were handcuffed prior to the search of the car,  
15 correct?

16 A. No.

17 Q. Let me rephrase that then. Were they handcuffed prior to  
18 the search of the car?

19 A. No.

20 Q. Were they free to leave prior to the search of the car?

21 A. No.

22 Q. They were handcuffed, though, however, once you found the  
23 weapon in the car, correct?

24 A. Correct.

25 Q. What was your basis for handcuffing them upon finding the

1 weapon in the car?

2 A. The fact that there was a firearm in the vehicle and at  
3 the time I had been advised twice by my dispatch that they  
4 were both convicted felons. At that point for my safety and  
5 the fact that one of them would have been in possession -- a  
6 felon in possession of a firearm, I placed both in handcuffs.

7 Q. Did you arrest either one of them prior to leaving the  
8 scene for being in possession of a firearm and being a felon?

9 A. My belief was -- I don't -- I believe I did advise them  
10 that -- that they were -- there was a firearm in the vehicle  
11 and that they were both convicted felons. I don't recall  
12 actually telling them that they were under arrest for that.

13 Q. Did you Mirandize either Mr. Hitchcock or Mr. Tandler at  
14 the point of the search or after the search?

15 A. No, I did not.

16 Q. Did you at any point in time ever acquire information  
17 that the handgun that you just testified about was illegal or  
18 there was anything illegal regarding that handgun being in  
19 these individuals' possession?

20 A. At the time of the stop or -- I guess...

21 Q. At the time of the stop.

22 A. At the time of the stop, my belief was that they were  
23 both convicted felons, so that they would have been in  
24 possession -- felon in possession of a firearm.

25 Q. Although you didn't arrest either one for that charge at

1 that point in time, correct?

2 A. Correct.

3 Q. At the time of the search, did you determine whose  
4 handbag was whose?

5 A. Not until after I had located that firearm. That's when  
6 I asked -- asked whose bag belonged to who.

7 Q. And -- and just to clarify the record, your testimony  
8 would be that this search was predicated upon your smell of  
9 the raw marijuana only, correct?

10 A. Correct.

11 Q. Now, once Mr. Tandler and Mr. Hitchcock were taken to the  
12 Otoe County Sheriff's Office, they were held there while you  
13 further investigated, correct?

14 A. Correct.

15 Q. Were they inventoried at that particular point in time?

16 A. Their persons?

17 Q. Correct.

18 A. Yes.

19 Q. Were they told to dress out in inmate's clothing?

20 A. I believe the sheriff's office did do that, yes.

21 Q. And they were held there and were not free to leave,  
22 correct?

23 A. Correct.

24 Q. Were they in shackles or handcuffs at that point?

25 A. Once they were changed out, no, they were not.

1 Q. Okay. Do you know if they were strip-searched?

2 A. I don't know.

3 Q. You don't know or no?

4 A. I don't know.

5 Q. Were you part of any interrogation at all once you left  
6 the scene of the stop and search?

7 A. No, I was not.

8 Q. Were you involved at all in the search of Mr. Hitchcock's  
9 person or the vehicle he was driving once both arrived at the  
10 Otoe County Sheriff's Office?

11 A. No, I was not.

12 Q. Is there anything illegal with simply transporting cash?

13 A. Just cash? Not that I'm aware of.

14 MR. COOK: Can I have one second, Your Honor --

15 THE COURT: You may.

16 MR. COOK: -- to look over my notes?

17 BY MR. COOK:

18 Q. Off- -- Trooper, sorry, how much time elapsed between the  
19 point at which you turned on your -- well, strike that. Did  
20 you turn on your overhead lights to pull over Mr. Hitchcock?

21 A. Yes, I did.

22 Q. Did you turn on your siren?

23 A. I don't believe so.

24 Q. Okay. From the point at which you initiated the stop to  
25 when Mr. Hitchcock pulled over, what would be your estimation

1 as to the amount of time that passed?

2 MS. SVOBODA: Objection, relevance.

3 THE COURT: Overruled. He may answer the question.

4 A. Fifteen to thirty seconds is an estimate.

5 BY MR. COOK:

6 Q. Was the air freshener in the car within the personal  
7 space of Mr. Hitchcock?

8 A. I suppose he could have reached it. It would have been  
9 within his reach, lunge or grasp.

10 Q. There's been a video offered into evidence today. I --  
11 That's from your cruiser. Are you -- are you aware of that?

12 A. Yes.

13 Q. Are you aware of the fact that at points in this video  
14 the audio is not available?

15 A. The audio on my person at times is not available, but the  
16 audio in the vehicle is always on.

17 Q. Okay. What is the reason that the audio on your person  
18 is not available at times?

19 A. When the -- At the points I turned that off was when  
20 Mr. Hitchcock and Tendler were setting in the vehicle, and at  
21 that point Deputy Holland was there who also had video, so our  
22 audio would have been on his video, if that makes sense.

23 Q. So you did not want to record any conversation between  
24 you and Mr. Holland; is that correct?

25 A. No, that is not correct.

1 Q. So what was the purpose then of turning off your audio?

2 A. I turned off my audio 'cause both subjects were in my  
3 patrol unit, and when you have both -- the cameras we have you  
4 can record the auto {sic} inside your vehicle and outside at  
5 the same time, but they will run over top of each other at  
6 times, and I was more concerned with having that in-vehicle  
7 audio.

8 And plus once Deputy Holland shows up at the scene, he --  
9 his vehicle's also equipped with a camera, so our  
10 conversations would have been captured on his camera, so none  
11 of our conversation was not -- our -- our conversation was  
12 recorded the whole time on one of the two videos.

13 Q. Do you know if there was any audio recorded in the cars  
14 between Mr. Hitchcock and Mr. Tandler?

15 A. Yes, I do know.

16 Q. Was there anything spoken between the two?

17 A. Yes, there was.

18 MR. COOK: May I approach, Your Honor?

19 THE COURT: Sure.

20 Miss Svoboda.

21 MS. SVOBODA: Oh, I'm sorry. I apologize.

22 MR. COOK: That's all right.

23 (Bench discussion had off the record.)

24 BY MR. COOK:

25 Q. Sorry about the delay there. I have a question for you

1 now. What makes you believe that there was audio on Deputy  
2 Holland's cruiser?

3 A. My belief that there was is just my experience with the  
4 Otoe County Sheriff's Office that their cars are equipped with  
5 cameras, and the car he was driving's equipped with a camera,  
6 and they have an audio recorder just like we have.

7 Q. Okay. Did you have a chance to ever listen to -- or,  
8 rather, strike that. Did you ever have a chance to observe  
9 the video of Deputy Holland's car?

10 A. No.

11 Q. And I should rephrase that. From this particular stop.

12 A. Correct. No, I have not.

13 MR. COOK: Can I have just a second to reflect here,  
14 Judge?

15 THE COURT: Uh-huh.

16 MR. COOK: Thank you.

17 BY MR. COOK:

18 Q. Did you, Trooper, ever prior to shutting off the audio on  
19 your person ask Deputy Holland, if he, in fact, did have his  
20 audio on or was recording?

21 A. No, I did not.

22 Q. Is there any particular standing operating procedure with  
23 the Nebraska State Patrol to your knowledge that has any  
24 particular protocol as to how to record audio or video during  
25 an investigation?

1 A. Our policy states that anytime we have contact with a  
2 person the audio has to be on in some form whereas leaving my  
3 in-car one on when the person is in the vehicle would meet  
4 that policy because anytime I'm contacting them they're in the  
5 vehicle, so you're going to be able to hear my conversation  
6 with them.

7 Q. This is going to seem kind of off the wall, I guess, but  
8 do you have any idea what the weather was like in Atlanta,  
9 Georgia, on January 2nd?

10 A. No idea.

11 Q. But you had testified that from your documentation it  
12 appeared as though Mr. Hitchcock had traveled from Atlanta,  
13 Georgia, prior to your stop of his vehicle, correct?

14 A. Correct.

15 Q. Did that have anything to do with the clothing he was  
16 wearing at the time?

17 A. I don't know.

18 Q. Is it possible that some of his shaking that you  
19 testified to could have had to do with the fact he was maybe  
20 cold?

21 A. Inside my patrol unit? I doubt it, but I guess  
22 anything's possible.

23 Q. Do you have any idea how many times you asked to search  
24 Mr. Hitchcock's vehicle?

25 A. I believe once, maybe twice at the most.



1 Q. Okay. But he said no every time you asked, correct?

2 A. Correct. He denied consent.

3 MR. COOK: I have no further questions.

4 THE COURT: Miss Svoboda.

5 REDIRECT EXAMINATION

6 BY MS. SVOBODA:

7 Q. Trooper, in whose bag was the firearm found?

8 A. Mr. Tandler's.

9 Q. And the -- So that was the black bag, right?

10 A. Correct.

11 Q. The red bag, you determined that belonged to whom?

12 A. Mr. Hitchcock.

13 Q. And it was Mr. Hitchcock that rented the vehicle,  
14 correct?

15 A. Correct.

16 Q. Sir, was either Mr. Tandler or Mr. Hitchcock ultimately  
17 determined to be a felon?

18 A. Neither one were determined to be a felon.

19 Q. Great. That's what I wanted to clear up. Okay. And  
20 then why would you not tell all the occupants of a vehicle  
21 about a marijuana smell?

22 A. Simply because I can't bring both subjects back with me.  
23 If I mention it while I'm up there and leave somebody in that  
24 vehicle, that gives them the opportunity to do something if  
25 there is marijuana in the vehicle whether it's hide it, eat

1 it, destroy it, do something to try to get rid of it.

2 Q. Okay. Thank you.

3 MS. SVOBODA: Judge, I have no other questions for  
4 the trooper.

5 THE COURT: Mr. Cook?

6 MR. COOK: No -- no further questions, Your Honor.

7 THE COURT: Why isn't the weapon in the suitcase a  
8 concealed weapon, Trooper?

9 THE WITNESS: It could -- it could be. Since it was  
10 in the trunk of the vehicle, I chose not to. Upon reflecting  
11 and watching the video, they could have accessed it from the  
12 vehicle -- the rear seat, so I think you probably could have  
13 cited the rear seat passenger for being in possession of a  
14 concealed weapon; however, since it was in the trunk, I didn't  
15 feel at the time that that was appropriate.

16 THE COURT: Miss Svoboda?

17 MS. SVOBODA: Nothing, Your Honor.

18 THE COURT: Mr. Cook.

19 RECROSS-EXAMINATION

20 BY MR. COOK:

21 Q. This -- this weapon was in a handbag, though, correct?

22 A. Correct.

23 Q. And in the trunk at -- closer to the rear of the trunk,  
24 correct?

25 A. Closer to the front actually seat of the trunk.

1 Q. Okay. But you did not at that point in time cite anyone  
2 for carrying a concealed weapon, correct?

3 A. Correct.

4 MR. COOK: Okay. No further questions.

5 THE COURT: You may step down.

6 The government may call their next witness.

7 MS. SVOBODA: Yes, Judge. Call Greg Kallhoff to the  
8 stand, Judge.

9 COURTROOM DEPUTY: State your full name for the  
10 record, please, and spell your last name.

11 THE WITNESS: Gregory Kallhoff, K-a-l-l-h-o-f-f.

12 COURTROOM DEPUTY: (Inaudible.)

13 THE WITNESS: Yes.

14 GREGORY KALLHOFF, PLAINTIFF'S WITNESS, SWORN

15 THE COURT: The government's witness.

16 MS. SVOBODA: Thank you.

17 DIRECT EXAMINATION

18 BY MS. SVOBODA:

19 Q. Good morning, sir. Would you mind stating your name one  
20 more time.

21 A. Gregory Kallhoff.

22 Q. Are you employed, sir?

23 A. Yes.

24 Q. By whom?

25 A. The Nebraska State Patrol.

1 Q. In what capacity?

2 A. I am a sergeant -- hold the rank of sergeant, assigned to  
3 investigative services. The position I hold is a drug liaison  
4 with the DEA in Omaha, Nebraska.

5 Q. What are your duties and responsibilities in that -- in  
6 that position?

7 A. I oversee the highway interdiction program in that I do  
8 follow-up work after large seizures of drugs, currency or  
9 vehicles.

10 Q. Okay.

11 A. Follow-up in terms of continued investigation or make  
12 sure that they are properly routed through the either state or  
13 federal system.

14 Q. How long have you been doing that?

15 A. Approximately five years now. Since 19-- or 2004.

16 Q. Sergeant, I'd like to direct your attention to January 3,  
17 2008. Were you called to the Otoe County Sheriff's Office on  
18 that day to -- in your DEA -- I should say in your DEA/State  
19 Patrol liaison capacity?

20 A. Yes, I was.

21 Q. And, ultimately, sir, it was to have -- for you to  
22 attempt to speak to Mr. Hitchcock and Mr. Tendler, correct?

23 A. Correct.

24 Q. Okay. Did you ever speak to Mr. Tendler?

25 A. Yes, I did.

1 Q. Okay. And did you speak to Mr. Hitchcock?

2 A. Yes.

3 Q. All right. About what time of day on the -- January 3rd  
4 of last year did you come in contact with Mr. Hitchcock?

5 A. It was in the evening, around 5:10, 1710 military hours.

6 Q. Okay. Early dinner hour?

7 A. Yes.

8 Q. Where was Mr. Hitchcock when you came in contact with  
9 him?

10 A. He was in a holding cell or in the Otoe County jail.

11 Q. Okay. Anybody else in the cell with him?

12 A. No.

13 Q. How's he dressed?

14 A. I believe he was in jail uniform or some type of -- it  
15 wasn't civilian garb.

16 Q. Is he handcuffed?

17 A. No, I don't believe he was.

18 Q. Okay. Do you actually go into the cell to -- to attempt  
19 to speak to him or do you stand outside, sir?

20 A. I think he was brought from that cell to an interview  
21 room that they had -- some type of other room other than the  
22 cell itself at the jail there. There was a table, I believe,  
23 and -- and chairs -- or at least chairs anyway, but it  
24 wasn't -- I don't believe it was the particular cell that he  
25 was in.

1 Q. Okay. In this room when you are talking to  
2 Mr. Hitchcock, is it just the two of you?

3 A. Yes.

4 Q. And is he handcuffed when he's in this room with you?

5 A. I don't believe so.

6 Q. But he's clearly detained?

7 A. Yes.

8 Q. All right. Tell me the first thing you said to  
9 Mr. Hitchcock.

10 A. I think I identified myself, presented my badge, my  
11 credentials so that he would be assured that I was a -- a law  
12 officer, that I was representing the State Patrol and the Drug  
13 Enforcement Administration at that time. Then I went forward  
14 with letting him know that we were interested in talking with  
15 him about a large amount of currency that had been located in  
16 the trunk of the vehicle he was either driving or riding in.  
17 I don't remember which.

18 Q. Okay. How did you -- What did you say to him after  
19 that?

20 A. I believe at that point or somewhere in there, he made  
21 known to me that he didn't know anything about the currency or  
22 the money that was found in the trunk, but he was very adamant  
23 that he had money in the glove box, and I believe it was  
24 around \$1,000 that he was laying claim or somewhere -- he --  
25 he didn't know the exact count from what I remember, but it

1 was around a thousand dollars.

2 Q. Have you obtained any biographical information from him  
3 prior to this?

4 A. Somewhere in there I asked his, you know, name and date  
5 of birth, Social Security number --

6 Q. Did he give those to you?

7 A. I believe the -- the name. He was reluctant to give me  
8 other than the city that he lived in. He wouldn't give me the  
9 street address. And I tried to let him know that there was a  
10 possibility -- or we were looking at a forfeiture of this  
11 money, and I would need an address to mail the correspondence  
12 to, and I wanted a very -- you know, to be very precise about  
13 the correct address for the procedures that would follow that  
14 we would need to be able to mail to him.

15 Q. What did he say in response to that?

16 A. He wouldn't provide me a street address, said the mailing  
17 address -- the P.O. Box that was listed or -- on his  
18 documentation would be sufficient to get anything to him.

19 Q. Okay. Were you still obtaining the biographical  
20 information from him when he distanced -- distanced himself  
21 from the money found in the vehicle?

22 A. Yes.

23 Q. What else, if anything, did Mr. Hitchcock tell you?

24 A. Well, at the point that he said that the currency -- the  
25 large amount of currency found in the trunk -- and I didn't

1 know the count at that time, so it was left as basically an  
2 undetermined amount. At the point he was saying it wasn't  
3 his, I had a form that I started to prepare, Voluntary  
4 Disclaimer in Ownership -- or of Interest in Ownership in U.S.  
5 Currency. I prepared -- filled out that form and read it to  
6 him, and I asked him if he was -- you know, what grade level  
7 so that I was -- felt comfortable that he understood and could  
8 read the English language, and he had affirmed that he could.

9 I presented the form -- read it and then presented it to  
10 him and asked him to sign it since he didn't own -- or didn't  
11 exert ownership on that currency. He read it and said he  
12 would not read it without an attorney reviewing it -- or would  
13 not sign it.

14 Q. Okay.

15 MS. SVOBODA: May I approach, Your Honor?

16 THE COURT: You may.

17 BY MS. SVOBODA:

18 Q. Sergeant, I've handed you what has been marked as Exhibit  
19 No. 1. Can you identify it? And if you can, would you please  
20 do so.

21 A. Yes, this is the form I was referring to, the Voluntary  
22 Disclaimer of Interest in Ownership form. It's an NSP form  
23 that we carry or we use if -- if a person does not claim or --  
24 or -- or denies ownership in a case that's similar to what I  
25 testified to.



1 Q. There's typing and --

2 THE COURT: What is that exhibit number again? I  
3 missed it.

4 MS. SVOBODA: One, sir.

5 BY MS. SVOBODA:

6 Q. There's typing and there's handwriting on Exhibit No. 1,  
7 correct?

8 A. Yes.

9 Q. Is the handwriting yours, sir?

10 A. Yes, it is.

11 Q. Upon your completion of that form and then Mr. Hitchcock  
12 saying he did not want to sign it, did you speak to him  
13 anymore?

14 A. Yes.

15 Q. What happened then?

16 A. There were questions then in regard to trying to find out  
17 his address or -- or if he had been employed. I asked him if  
18 he had employment. He said he was employed as a jewelry  
19 salesman and that he purchased jewelry over the Internet and  
20 then made door-to-door sales. I'd asked him if he knew his  
21 level of income and he said he thought he earned about \$5,000  
22 in 2007 and 5,000 in 2006 and that he had been unemployed in  
23 2005.

24 Q. Did you ask him anything else, sir?

25 A. Yes.

1 Q. What was that?

2 A. I asked him if he'd received any inheritances to which he  
3 said he had from his mother. He provided a first name but  
4 refused to give me a last name for her.

5 Q. Why? Do you know?

6 A. He was -- The questioning -- or the -- he -- he wasn't  
7 real forthcoming with -- with trying to answer any of my  
8 questions really. Any -- He -- he became somewhat  
9 belligerent and said I didn't need to know that.

10 Q. Okay. Sir, if he had already signed -- or, I'm sorry,  
11 refused to sign Exhibit No. 1, but he had told you the large  
12 amount of money found in the vehicle wasn't his, why were you  
13 asking him those questions?

14 A. Oftentimes I encounter people that initially will deny  
15 the money is theirs. While we're seated together in an  
16 attempt to -- they may later come back and claim that it's  
17 theirs, and so it at least gives me an avenue of trying to  
18 assert that it could be theirs by asking some of those  
19 questions, what level of income did he make, did he have  
20 inheritances, so those are points that later I could look to  
21 either validate or refute his later claim.

22 Q. While you were speaking to Mr. Hitchcock as you've just  
23 described, income, inheritance, had you obtained all the  
24 biographical information from him that you'd asked for?

25 A. No, I didn't get, you know, an address or -- or -- I

1 think I had the Social Security number because it was on a  
2 card that was found there, but I had everything but maybe a  
3 good address would be probably -- and a good phone number.

4 Q. Oh, you didn't have a phone number either?

5 A. Well, I don't recall exactly, but --

6 Q. Okay.

7 A. -- there would have been -- anything that I didn't have  
8 written down, he was not willing to provide any further  
9 information.

10 Q. Okay. And when you say anything that you didn't have,  
11 what was that?

12 A. Well, I guess the address would be the main thing, if  
13 that was a good address. Sometimes your address is outdated  
14 on your driver's license, for instance --

15 Q. Uh-huh.

16 A. -- and so to make sure that it's an updated address  
17 that -- that would be the reason for questioning on that.

18 Q. Okay. Thank you. Sir, after you spoke to him about a  
19 possible inheritance, did you speak to him about anything  
20 else?

21 A. I think -- I can't recall. I think that maybe got to  
22 the point where he refused to answer anymore questions and  
23 said he wanted -- didn't want to talk to me any further.

24 Q. About how long did the interview last?

25 A. Well, I started at 1710, I believe, and I see on this

1 form -- it shows 1738 and that would have probably been the  
2 ending -- 'cause I had no other way to document it, but I  
3 think it was probably -- so it'd be about 28 minutes.

4 Q. Half an hour?

5 A. Half an hour.

6 Q. Okay. I'm sorry, I don't know if I did this.

7 MS. SVOBODA: Your Honor, I'd offer Exhibit No. 1  
8 into evidence.

9 THE COURT: You did not.

10 Any objection, Mr. Cook?

11 MR. COOK: No objection.

12 THE COURT: Exhibit 1'll be received.

13 MS. SVOBODA: Thank you. Judge, I have no other  
14 questions for the witness.

15 THE COURT: Mr. --

16 MS. SVOBODA: May I -- Would you like me to go up  
17 and retrieve the exhibit, Judge?

18 THE COURT: You can if you wish.

19 Mr. Cook.

20 MR. COOK: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. COOK:

23 Q. Would your proper title be Investigator?

24 A. I'm actually an Investigative Sergeant, but --

25 Q. Investigative Sergeant. I just don't want --

1 A. That's fine.

2 Q. -- don't want to offend you.

3 A. No, you're not going to.

4 Q. Investigator Kallhoff, when you arrived at the Otoe  
5 County Sheriff's Office, was Mr. Hitchcock already dressed in  
6 inmate's clothing?

7 A. Yeah. Well, yes.

8 Q. Okay. You didn't see him searched or anything like that  
9 at that point -- during your encounter with him, correct?

10 A. No. He was secured inside the facility.

11 Q. Okay. How many individuals were in on the interview with  
12 Mr. Hitchcock?

13 A. As I testified earlier, just myself.

14 Q. Okay. And this was in a small interview room in the Otoe  
15 County Sheriff's Office, correct?

16 A. Correct.

17 Q. Did you advise Mr. Hitchcock of his Miranda rights upon  
18 initiating the interview?

19 A. No.

20 Q. Why?

21 A. To obtain the background or the bibliography information,  
22 usually I don't start that. I also -- to the disclaimer  
23 information or the waiver form is usually a -- the money is a  
24 separate -- it's not a criminal action against him. It's a  
25 action against the money, the seizure of it.

1           So to get -- in order to get the voluntary disclaimer  
2       where he denied -- initially uttered that he -- it wasn't his  
3       money when I explained why I was there, I went through with  
4       the form and would have done Miranda following that normally.

5       Q.    But you were interviewing him because you believed there  
6       was a possibility that this money was connected to crime in  
7       some way, correct?

8       A.    That would have been my focus as I moved into the  
9       interview, yes.

10      Q.    And you knew this prior to initiating the interview,  
11      correct?

12      A.    Correct.

13      Q.    And you knew that Mr. Hitchcock was driving that car,  
14      correct?

15      A.    He was in the car. I don't remember -- Yeah,  
16      somebody -- I don't remember who was driving it, but yes.

17      Q.    So there was a distinct possibility that you were  
18      entering into a conversation with Mr. Hitchcock regarding  
19      money that was in the car that he was driving that may have  
20      been used in criminal activity, correct?

21      A.    Yes.

22      Q.    And this may have been testified to already, but he was  
23      not free to leave during this interview, was he?

24      A.    Not leave the facility, but he could have left -- we  
25      could have ended the interview, yes. So he was not free to

1 leave -- to drive away if that's what you mean.

2 Q. You also testified, and stop me if a misquote this, but  
3 that he informed you he did not know about the money in the  
4 trunk of that vehicle that he was driving, correct?

5 A. Yes.

6 Q. Did he specifically say those words? He as in  
7 Mr. Hitchcock, did he specifically say those words?

8 A. Well, I'll repeat what I said -- or how I -- you know,  
9 in -- it's -- he said -- I -- I said, I'm here to look into an  
10 investigation of a large amount of currency that was found in  
11 the trunk. He says, I don't know anything about that, but the  
12 money that's in the glove box, and there should be around a  
13 thousand dollars, is my money, but it's not part of that money  
14 in the trunk.

15 Q. Did you record this conversation in any way?

16 A. No.

17 Q. No notes, anything?

18 A. I took notes, but once I made my investigative report,  
19 those notes are destroyed usually. Just -- That's our common  
20 practice.

21 Q. Were there any other -- strike that. As far as the  
22 bi- -- bio info is concerned of Mr. Hitchcock, he provided you  
23 with everything except for a street address; is that correct?

24 A. Yes.

25 Q. Is there any reason why he's required to give you

1 anything other than a P.O. Box?

2 A. He's not required to give me anything, I guess, if he  
3 didn't want to.

4 Q. I was going to move on to that. He's not required to  
5 talk to you at all, is he?

6 A. No.

7 Q. When you were speaking with Mr. Hitchcock about this  
8 voluntary disclaimer that's marked as Exhibit No. 1 and  
9 received, did you also discuss with him the concept of money  
10 laundering?

11 A. I very possibly could have talked about that. I don't  
12 recall exactly. I -- If -- It may have been brought up as a  
13 point of an investigation could look into that.

14 Q. And you discussed with that -- you discussed money  
15 laundering with him in the context of his signing what's  
16 marked as Exhibit No. 1 and received, correct?

17 A. I'm not sure what you mean.

18 Q. Your discussions with Mr. Hitchcock involving money  
19 laundering was connected to the voluntary disclaimer, correct?

20 A. Do you mean if -- I'm not sure what you want me to  
21 answer, I guess. That it was -- that I discussed that as I  
22 presented the form you mean?

23 Q. Correct.

24 A. I don't recall exactly, you know, if that -- where that  
25 came in. If that -- it may have came up about money



1       laundrying, about talking about investigating that, but I  
2       don't remember if that was when the form was presented. The  
3       form was brought out early, and it was still something -- if  
4       he wanted to exert that throughout the time I was there, it  
5       was left on the table, so I didn't -- that's why I documented  
6       at the end of the interview the time.

7               So the context you're trying to put together is -- is --  
8       there was talk of -- of an investigation following into money  
9       laundrying and needing his help to try and sort it out whether  
10      this was involved or not came up through the entire 28 minutes  
11      but not at the point when I brought that form out I do not  
12      believe.

13      Q.     So the form was just sitting out there during this  
14      conversation, correct?

15      A.     I brought the form out when he first denied that it was  
16      his money and the form was left -- basically, as I testified  
17      it was left on my -- in front of me, it was left in -- on the  
18      table in front of him. When he said he didn't want to sign it  
19      without an attorney, I didn't put it away. I left it laying  
20      there.

21      Q.     Okay. And how long did you continue with that interview  
22      once he indicated he wanted to speak with an attorney?

23      A.     I don't remember how many minutes in that he said he  
24      wanted an attorney to review that form. I did -- The entire  
25      interview took approximately 28 minutes.

1 Q. And at no point in time even after discussions of money  
2 laundering was Mr. Hitchcock Mirandized, correct?

3 A. Correct. The whole 28 minutes never read Miranda to him.

4 Q. But other than bio -- strike that. Other than bio  
5 information, you also went into issues of income and  
6 inheritance with Mr. Hitchcock, correct?

7 A. Correct.

8 Q. Investigator, did you specifically inform Mr. Hitchcock  
9 that if he claimed that money was his, you were going to  
10 proceed with money laundering charges?

11 A. I don't recall that. I -- I can't make charges without  
12 an attorney, so how could I proceed with...

13 Q. Did you inform him that you were going to investigate him  
14 for money laundering charges?

15 A. I don't recall and I don't believe so, no.

16 Q. Did you discuss racketeering with Mr. Hitchcock?

17 A. It may have been mentioned that as -- as with the  
18 investigation of the money that it would be looked at as far  
19 as money laundering and racketeering. Those are part of -- of  
20 what -- the nature of what would be looked into.

21 MR. COOK: I have no further questions --

22 THE COURT: Miss Svoboda.

23 MR. COOK: -- at this time.

24

25

REDIRECT EXAMINATION

1 BY MS. SVOBODA:

2 Q. Sergeant, did he ask for a lawyer or just say that he  
3 wanted to have a lawyer look at Exhibit No. 1?

4 A. He asked -- he said he would not sign that form, that  
5 exhibit, without having an attorney look at it.

6 Q. Okay. Thank you, Sergeant.

7 MS. SVOBODA: Judge, I have no other questions for  
8 Sergeant Kallhoff.

9 MR. COOK: I have no other questions either.

10 THE COURT: You may step down. Thank you, Sergeant.  
11 Miss Svoboda.

12 MS. SVOBODA: The United States rests, Your Honor.

13 THE COURT: What's -- We're going to take a break.

14 Let's find out -- Mr. Cook, what are you anticipating  
15 witness-wise?

16 MR. COOK: I am -- I'm only going to have one  
17 witness, Your Honor.

18 THE COURT: And that will be?

19 MR. COOK: And that would be Mr. Hitchcock. What I  
20 would like to do is use this break that you so graciously are  
21 going to give us to discuss with him -- get an idea of --  
22 just -- I just want to look at what's basically been presented  
23 so far --

24 THE COURT: I understand.

25 MR. COOK: -- and make a decision on that.

1 THE COURT: Right.

2 MR. COOK: I don't anticipate we're going to go past  
3 noon. I --

4 THE COURT: Okay. I want to see each of you at  
5 sidebar. We'll take a 15-minute recess.

6 MR. COOK: Sure.

7 (A short recess was had.)

8 COURTROOM DEPUTY: Please rise.

9 THE COURT: Please be seated. Back on the record.

10 Mr. Cook.

11 MR. COOK: Sorry, Judge. I apologize for the delay.  
12 I wanted to discuss everything thoroughly with my client. We  
13 have decided at this point that we are not going to have  
14 Mr. Hitchcock take the stand.

15 THE COURT: All right. Argument. Mr. Cook, you can  
16 stay seated during argument. Rather -- I understand where  
17 the burdens lie in this case, and there's some issues I wish  
18 and hope that each of you'll be able to enlighten me a little  
19 bit on, so you can stand or sit as you please, and -- while I  
20 understand where the burdens are, I think it's easier,  
21 Mr. Cook, if you tell us what you think is wrong and we have  
22 Miss Svoboda respond to that and then I'll let you close.

23 MR. COOK: Your Honor, where I believe the issues  
24 lie -- and -- and I'll just -- I'll be very brief. I believe  
25 that there was no -- and I don't like to call people liars.

1 Maybe there was a smell of something that resembled marijuana,  
2 but myself and my client for that matter have an issue with  
3 the fact that there was a supposed smell of marijuana in the  
4 first place.

5 There was a previous stop. There was a citation. There  
6 is a citation in evidence, I believe it's Exhibit 109 of the  
7 defense, that shows that this stop occurred. There's a time  
8 that it occurred. We also know the specific time that the  
9 stop of Mr. Hitchcock's vehicle occurred.

10 We're talking almost 670 miles that were traveled here  
11 from the first stop to the second stop. Going the speed  
12 limit, which obviously Mr. Hitchcock was not nor his passenger  
13 was doing, which -- you know, which brings up another little  
14 aside. I don't know why anyone who would be carrying pounds  
15 of marijuana -- although I have seen it in the past -- would  
16 be speeding once, let alone twice down the road with that type  
17 of -- with -- with a gun, with -- with copious amounts of cash  
18 and marijuana in the car. I don't understand it.

19 You'd think even after -- you know, my argument would be  
20 after the first time there's no way that they would have  
21 anything illegal in the car to have it happen again --

22 THE COURT: Well, I agree with you, Mr. Cook, but I  
23 have to tell you that after being -- doing this for 28 years,  
24 I've even seen so many videotapes of violations that occur  
25 with large amounts of cash and drugs in the car that I -- but

1 I am amazed that they do occur, but I do have some at least  
2 anecdotal information based on some of the continuing  
3 violations that have been on videotape and things like that  
4 that I'm fairly amazed how people drive in circumstances that  
5 I would be a very cautious driver.

6 MR. COOK: And -- and -- and then our -- it's  
7 argument of -- or argument obviously on our behalf, but the  
8 fact that the -- or the citing officer in Kentucky would not  
9 smell this marijuana is beyond me when Trooper Bruggeman  
10 indicates that it was so strong that as soon as that window  
11 was rolled down on the passenger -- or on the driver's side of  
12 this vehicle, he instantly smelled it.

13 There was testimony regarding air freshener on the floor.  
14 It was testified this was within the driver, Mr. Hitchcock's,  
15 grasp. Although he claims he didn't smell any air freshener,  
16 he would have had a chance to do it. If one wants to think,  
17 well, maybe before there was some spray sprayed in the back  
18 in -- or in the car and that's why no one smelled it when they  
19 were previously stopped.

20 And then beyond that I think you look at the time frames  
21 involved between the first stop and the second stop. There  
22 was real no -- there was no time to do anything I would argue  
23 or submit to the Court from 4:32 a.m. January 3rd in Christian  
24 County, Kentucky, to almost 2 p.m. in the afternoon in Otoe  
25 County, Nebraska. They were actually faster than what

1 MapQuest would tell you they were supposed to get there on if  
2 you were to plug that in.

3 I -- you know, so any thoughts that, well, maybe they did  
4 something in St. Louis or somewhere between there I think  
5 is -- is arguably impossible given the time frames we're  
6 discussing here.

7 Beyond that I think this detention is just way too long.  
8 This stop was initiated, if I remember correctly, at  
9 approximately 1324 military time on January 3rd, 2008. They  
10 weren't even released -- the last testimony indicates that the  
11 interrogation by Investigator Kallhoff ended at 1738. They're  
12 still dressed in inmate's clothing and being interrogated at  
13 1738 with no charges being filed I might add.

14 And -- and by the I'm going to say arresting but  
15 detaining officer's own testimony, the sole basis for  
16 Mr. Hitchcock being taken into custody is -- is premised on  
17 the fact that they're investigating this marijuana smell  
18 and -- and the money that's found and -- but this doesn't end  
19 until 1738. I don't understand how that is not too long based  
20 upon the testimony that we have here today, and based upon the  
21 length of time and our argument that the search was not a  
22 legitimate search or one that was -- that was based upon  
23 probable cause, we would ask that this -- the -- the motion  
24 excluding the stop be wholly held up by the Court.

25 THE COURT: Thank you, Mr. Cook.

1 Miss Svoboda.

2 MS. SVOBODA: Judge, Mr. Hitchcock came in contact  
3 with the -- law enforcement by way of the speeding violation.  
4 While the officer is up at the vehicle conducting that related  
5 investigation, he smells the odor of raw marijuana. The only  
6 testimony before the Court is his testimony that the smell is  
7 there. It's uncontroverted.

8 That gives -- Under Eighth Circuit authority that gives  
9 him the authority to search the vehicle. He searches and he  
10 finds a handgun, a shrink-wrappage -- food shrink-wrap machine  
11 and money hidden in the wall of the trunk of a rented vehicle.

12 The previous stop in Kentucky, Judge, different driver,  
13 different weather conditions maybe, and there's absolutely no  
14 testimony about whether or not the stopping officer in  
15 Kentucky smelled marijuana or not. That's simply a red  
16 herring.

17 The officer had probable cause to conduct the traffic  
18 stop. He had -- he had probable cause to search the vehicle.

19 As far as the statements that Mr. Hitchcock made to  
20 Sergeant Kallhoff, my understanding of the testimony is  
21 Sergeant Kallhoff introduces himself and says, I'm here to  
22 talk to you about a large sum of money found in the vehicle,  
23 and he says, I don't know anything about that, but the money  
24 in the glove box is mine.

25 Judge, I submit to you that those -- that -- at least



1 that statement is still admissible because the officer -- or  
2 sergeant didn't even have a chance to enter -- to fully  
3 introduce himself and try to at least get the biographical  
4 information he was there to get. That's a volunteered  
5 statement from Mr. Hitchcock. I'd submit it on that, Judge.

6 THE COURT: Mr. Cook.

7 MR. COOK: Just briefly, Your Honor. I don't think  
8 it's clear on the record that there was anything just blurted  
9 out just as soon as he -- the investigator walked into this  
10 interview room, and beyond that, Your Honor, it's clear on the  
11 record that the investigator knew what he was walking into,  
12 that this was an individual by his own testimony that was  
13 stopped with a significant amount of cash in the -- in the  
14 investigator's mind linked to some type of crime and that my  
15 client was driving that vehicle.

16 He knew that there was definitely a possibility that he  
17 was entering into a situation where he was interrogating  
18 someone that could eventually be charged with a criminal --  
19 with criminal conduct; therefore, based upon that I think he  
20 should have been Mirandized init- -- you know, as soon as he  
21 walked in the room, and I don't think that any of those  
22 statements made by my client during that interrogation should  
23 be admissible.

24 THE COURT: Okay. I'm prepared to rule on the record  
25 at this time. Let's start with the first issue of the stop,

1 and that portion of the brief and the claim in defendant's  
2 {sic} motion to suppress, number 28, was withdrawn, and so  
3 I'll just note for the record that the reason for the stop was  
4 speeding.

5 Then we move to the issue of a factual finding in this  
6 matter. I find that officers -- that Trooper Bruggeman and  
7 Sergeant Investigator Kallhoff are credible in their testimony  
8 today, and I viewed the -- I also viewed the exhibits and that  
9 nothing contradicts their testimony within the exhibits  
10 although I'll note the exhibits obviously are the best  
11 evidence of what occurred as to the things that the exhibits  
12 reflect, so we have the reason for the stop.

13 Then we have factually the findings that the stop  
14 occurred at approximately 1:52 p.m. on January 3rd, 2008, that  
15 the trooper after initiating the stop and informing the  
16 defendant of the reason for the stop interspersed questions of  
17 background information with some other questions about trip  
18 and reasons for the trip and where the individual was going;  
19 however, I'll note that the entire matter was concluded by the  
20 trooper in less than ten minutes, actually five or six  
21 minutes, before he did issue the speeding citation and  
22 returned the paperwork to the defendant in this case.

23 The -- Then I will note that the trooper stated that he  
24 smelled raw marijuana in the very beginning when he first  
25 approached the vehicle and he smelled it on the person of --

1 of the claimant in this matter -- and I referenced defendants.  
2 I'm sorry. I usually do these suppressions obviously for  
3 defendants more than claimants. -- the claimant in this case,  
4 smelled it also -- the trooper smelled it after the claimant  
5 had been removed to the trooper's vehicle, continued to smell  
6 the odor. I find that that's credible testimony and that it's  
7 not contradicted.

8 And specifically I would note as to the information on  
9 the Kentucky stop, there are a lot of variables in this  
10 situation. I don't know that we had a different driver. We  
11 obviously had a different time of day. We have different  
12 temperatures. We have different wind factors, and we may well  
13 have different olfactory talents or lack thereof by the two  
14 individuals who were involved in stopping vehicles as to what  
15 was smelled or not smelled, and the -- and actually the bottom  
16 line is we don't know what was smelled. I mean, one could  
17 assume that since nothing happened that the officer in  
18 Kentucky didn't smell raw marijuana, but we don't know that.  
19 It just -- The information while admissible, I think, is not  
20 of much weight in this case.

21 So having found that and found that after then giving the  
22 citation to Mr. Hitchcock the trooper then asked for  
23 permission to search which was denied which is certainly  
24 within Mr. Hitchcock's legal rights, and at that time then the  
25 trooper informed Mr. Hitchcock that a search would occur based

1 upon his belief that -- the trooper's belief that he had  
2 probable cause to search based upon the smell of -- of raw  
3 marijuana.

4 And it is clear under the law that police may search a  
5 car without a warrant if they have probable cause to believe  
6 that a car contains contraband or evidence, *United States vs.*  
7 *Neumann*, 183 F.3d 753 at Page 756, Eighth Circuit, 1999. The  
8 Eighth Circuit has consistently found that the smell of  
9 burning or raw marijuana is, in fact, probable cause for the  
10 search of a vehicle without consent.

11 So in this case it's the government's burden without  
12 consent or without a warrant to show how the car was searched,  
13 and in this case I find based upon my factual findings as to  
14 credibility as to what happened that the length of detention  
15 was not long, that in this case it was just seconds after the  
16 completion of the gaining of the information about the records  
17 and -- and driving information about the defendant -- claimant  
18 and his passenger.

19 And it -- and the Circuit has also held that it's okay to  
20 blend those questions as to biographical background  
21 information, driving information and travel information as  
22 long as it does not become unduly lengthy in its -- in its  
23 duration. In this case, we had very, very short duration  
24 traffic stop. Actually, almost amazingly short considering  
25 the circumstances.

1           So the search is based upon probable cause finding  
2       Bruggeman to be -- Trooper Bruggeman to be credible in this  
3       matter and that probable cause did exist for the search of the  
4       vehicle.

5           Then we move factually to the fact that the -- the search  
6       occurred, items were found, and they are -- that portion of  
7       the motion is denied.

8           Then the claimant and his passenger are moved to the jail  
9       facility sometime in the early part of the afternoon, 2:00 to  
10      2:30, and then we have a questioning session that begins at  
11      1710, which is 5:10, and goes to 5:38 by Investigator Sergeant  
12      Kallhoff. I find Investigator Sergeant Kallhoff to be  
13      credible maybe somewhat based on the ruling to the detriment  
14      of his position.

15          Because it's my finding, first of all, that the length of  
16      detention in regard to its coercive nature as Mr. Cook points  
17      out troubles me although that's not the real basis of my  
18      ruling, but I do find in this case that there is custody, the  
19      individuals were at the jail, they were -- went through some  
20      kind of a booking facility or -- or process, although it's not  
21      clear, they were in jail clothing although they were not  
22      handcuffed. They were clearly not free to leave. They were  
23      in custody. That's the first prong of Miranda.

24          The second prong of Miranda is the interrogation prong.  
25      Now, I understand the government's position in this case based

1 upon the testimony of Kallhoff is that they're there trying to  
2 clear up this quasi civil issue as to who has the money, but  
3 Kallhoff was extremely frank in his testimony and in his  
4 admissions that he made about the questions that were asked.

5 Now, while we don't know exactly the order that these  
6 occurred in, we know that there was some discussion also about  
7 money laundering admitted by Kallhoff, there was a discussion  
8 about racketeering, there was discussion about Mr. Hitchcock's  
9 income, there was discussion about Mr. Hitchcock's  
10 inheritance. All of which I find are outside of what might  
11 be -- and I'm really hesitant to say for sure about this --  
12 what might be the ability of law enforcement to come in  
13 without Miranda warnings, and I find factually that no Miranda  
14 warnings were given.

15 But even without that I'm a little troubled by law  
16 enforcement arriving with form 109 -- excuse me, form -- the  
17 disclaimer form which is Exhibit No. 1 and starting to talk  
18 about these things, because this gets very close to the area  
19 where you're talking about something that the investigation is  
20 involving, and I don't think it's much of a stretch at all to  
21 find out -- to find or conclude, but I'm not so concluding at  
22 this time, that even that kind of a contact with a disclaimer  
23 form might not require Miranda because it would lead to  
24 questioning -- expressed questioning that police should know  
25 would reasonably likely elicit incriminating responses, *Rhode*

1 *Island vs. Innis*, 446 U.S. 291, a 1980 case.

2 But in this case, I just don't have Exhibit 1 coming  
3 forth and being talked about. We have the additional  
4 conversation in this case which deals -- as Sergeant  
5 Investigator Kallhoff talked about, they're talking about  
6 racketeering, money laundering investigation, Mr. Hitchcock's  
7 income, his inheritance or lack thereof. In this case, I have  
8 actual additional facts that lead me to conclude that this --  
9 these are questions -- expressed questions that law  
10 enforcement should be aware would reasonably likely to elicit  
11 an incriminating response in an investigation.

12 And in this case, I find that that occurs from the  
13 very -- the very beginning because I -- I can't -- I realize  
14 Miss Svoboda's comment about when certain things occur, but  
15 I'm not that sure about when certain things occurred, I don't  
16 think Kallhoff was, and so it's so intermixed in this case --  
17 this is different than the situation where the Circuit --  
18 Eighth Circuit has said during the time the police -- law  
19 enforcement have a stop and they're doing the background  
20 information, they can intersperse travel and these type of  
21 thing -- type of questions and background questions.

22 That's different. This isn't that situation in a traffic  
23 stop. This is one in custody in a law enforcement facility,  
24 and I think in this case Miranda -- because there's custody  
25 and expressed questioning reasonably likely to elicit

1       incriminating statements where Miranda should apply, and in  
2       this case factually in my finding does apply because of the  
3       circumstances, and I exclude all testimony -- or all comments  
4       made by Mr. Hitchcock to Investigator Sergeant Kallhoff at the  
5       time of their speaking in the law enforcement facility.

6               So the conclusion is this: For the reasons set out in --  
7       on the record, the motion to suppress, number 28, is granted  
8       in part and denied in part. It is denied as to the search of  
9       the vehicle and the -- since there was nothing wrong with the  
10      stop or the search, there is -- and there is, therefore, no  
11      taint to any of the items seized from the search of the  
12      vehicle, so it is denied as to the search of the Cadillac.

13              It is granted as to all statements made by Claimant  
14      Hitchcock to Investigator Sergeant Kallhoff.

15              Mr. Cook, is there anything else I could do for you or  
16      Mr. Hitchcock this morning?

17              MR. COOK: I don't believe so, Your Honor, no.

18              THE COURT: For the defendant? Miss Svoboda?

19              MS. SVOBODA: No, Judge.

20              THE COURT: Other than we're going to need a trial  
21      date --

22              MS. SVOBODA: Right.

23              THE COURT: -- at some point in time --

24              MS. SVOBODA: That's --

25              THE COURT: -- but how do you want to handle that?



1       You want to -- you want to have a conference to talk about  
2       that later? Do you want to do that now?

3               MR. COOK: I would -- well, the only reason I would  
4       say later, Your Honor, is just because of the nature of my --  
5       my client and another witness -- well, a couple other  
6       witnesses living out of state quite some distance --

7               THE COURT: I have no problem with later.

8               MR. COOK: -- so I would like to do it later, I  
9       guess.

10              THE COURT: Yeah, I'm not -- I'm not pressing for it  
11       to be determined now.

12              Miss Svoboda, is that okay with you?

13              MS. SVOBODA: Sure, Judge. Do you want us to maybe  
14       set up a telephone conference or something?

15              THE COURT: Why don't you -- why don't you do that.  
16       Unfortunately, or fortunately maybe, next week I'm going to be  
17       away --

18              MS. SVOBODA: Right.

19              THE COURT: -- at the Eighth Circuit meeting, but we  
20       could set it up with -- with -- just call Angie in my chambers  
21       and we'll get it set up, and -- sometime after the first week  
22       in -- we could have the conference after the first week in  
23       August and then we can decide about travel schedules.

24              MS. SVOBODA: Okay. I'll -- I'll line that up with  
25       Mr. -- with Mr. Cook next week, Judge, and we'll set something

up for this month.

THE COURT: All right.

MS. SVOBODA: August.

THE COURT: We're in recess.

MS. SVOBODA: Thank you, Judge.

THE COURT: Thank the lawyers for their work.

MR. COOK: Thank you, Judge.

(Adjourned at 11:52 a.m.)

I, Rogene S. Schroder, certify that the foregoing is a correct transcription to the best of my ability from the digital recording of the proceedings held in the above-entitled matter.

s/Rogene S. Schroder  
Transcriber

August 25, 2009  
Date

## I-N-D-E-X

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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WITNESSES:FOR THE PLAINTIFF:

Kaleb Bruggeman	4	26	41	42
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Gregory Kallhoff	43	52	59	
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MOTIONS:Made

	<u>Ruled</u>
	<u>On</u>

Claimant's Motion to Sequester	3	3
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EXHIBITS:Offered

	<u>Ruled</u>
	<u>On</u>

1. Copy of Voluntary Disclaimer	52	52
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4. Video of Traffic Stop	3	3
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109. Copy of Citation	26	26
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